

Hearing Date: November 20, 2019 at 10:00 a.m.
Objection Deadline: November 13, 2019 at 5:00 p.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : **Chapter 11**
:
SEARS HOLDING CORPORATION, et al., : **Case No. 18-23538 (RDD)**
:
: **(Jointly Administered)**
:
Debtors.¹ :
:
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**APEX SYSTEMS, LLC'S APPLICATION FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179

Apex Systems, LLC, and certain affiliated entities (collectively “Apex”),² by and through undersigned counsel, file this application for the allowance and payment of its administrative expense (the “Application”), pursuant to 11 U.S.C. § 503(a), and respectfully states as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

RELEVANT BACKGROUND

2. On October 15, 2018 (the “Petition Date”), Sears Holdings Management Corporation (“Sears Holdings Management” and collectively with the other debtors, the “Debtors”), a debtor and debtor-in-possession in the above-captioned chapter 11 cases, commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

3. The Debtors have continued to operate and manage their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

4. Apex and Sears Holding Management are party to a certain pre-petition Master Service Agreement dated as of November 10, 2016 (the “MSA” and collectively with all other supporting or related agreement, amendments, addendums, exhibits, and/or schedules to the foregoing, the “Apex Agreement”). Pursuant to the Apex Agreement, Apex provided professional services to Sears Holding Management as the parties agreed upon from time to time (collectively, the “Services”).

² As of December 31, 2014, Apex Systems, Inc. became a limited liability company, thus becoming Apex Systems, LLC.

5. After the Petition Date, Apex continued to provide the Debtor with Services.³ To date, the Debtor has made no payments on the invoices listed below and is indebted to Apex in the sum of \$35,784.04 (the “Post-Petition Amount Due”):

Invoice #	Invoice Date	Invoice Amount
0004348440	12/11/2018	\$3,506.40
0004346301	12/11/2018	\$3,637.30
0004346302	12/11/2018	\$3,637.30
0004346303	12/11/2018	\$3,637.30
0004346444	12/11/2018	\$3,038.90
0004346445	12/11/2018	\$3,038.90
0004346446	12/11/2018	\$3,038.90
0004346447	12/11/2018	\$2,431.12
0004348438	12/11/2018	\$3,506.40
0004348439	12/11/2018	\$3,506.40
0004348441	12/11/2018	\$2,805.12
Total		\$35,784.04

6. Section 503(b)(1)(A) provides for the allowance, as an administrative expense, the “actual, necessary costs and expenses of preserving the estate” 11 U.S.C. § 503(b)(1)(A). Such expenses are entitled to allowance as administrative expense if they “aris[e] out of a transaction between the creditor and the . . . debtor in possession” and “the consideration supporting the claimant’s right to payment was both supplied to and beneficial to the debtor-in-possession in the operation of the business.” *See In re Bethlehem Steel Corp.*, 479 F.3d 167, 172 (2d Cir. 2007).

7. Apex provided Services to Sears Holdings Management after the Petition Date in the ordinary course of business, and these Services benefited Sears Holdings Management in the operation of its business. Accordingly, the Post-Petition Amount Due for such Services is

³ The documentation supporting the Application is voluminous and/or confidential, but was provided to Debtor’s counsel. Further information regarding this Application is available upon written request to counsel.

undisputedly an administrative expense of the Debtors that is entitled to priority payment under section 503(b)(1)(A) of the Bankruptcy Code.

RESERVATION OF RIGHTS

8. Apex expressly reserves the right to amend, modify, or supplement this Application in any way, including, without limitation, to assert additional claims related to (a) setoff, (b) recoupment, (c) indemnification, (d) subrogation, and (e) any of Apex's rights under any agreement or under statutory, regulatory, civil or common law, or any equitable relief. This Application is not, nor shall it be deemed to be, (a) waiver or release of Apex's rights against any person, entity, or property, (b) an election of remedies, or (c) a waiver or release of any claims that are currently owing and not identified in this Application, including, without limitation, the proof of claim filed by Apex for unpaid Services provided prior to the Petition Date (Claim No. 11714), and/or claims that may become due and owing to Apex by the Debtors subsequent to the filing of this Application.

WHEREFORE, Apex respectfully requests the allowance and payment of its administrative expense, failing which Apex requests entry of an order by this Court directing the payment by Sears Holdings Management of \$35,784.04 and for such other and further relief as is just.

Dated: October 30, 2019
New York, New York

McGUIREWOODS LLP

By: /s/ Shawn R. Fox
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